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IN THE UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
SPOKANE

TODD BATTEN, an individual;	)	
ROBERT DYER, an individual;	)	
REGGIE MORRIS, an individual; and	)	Case No.
ANNA TESTER, an individual,	)	
	)	COMPLAINT FOR DAMAGE
Plaintiffs,	)	(MEDICAL NEGLIGENCE AND
v.	)	CORPORATE NEGLIGENCE)
PROVIDENCE ST. JOSEPH HEALTH;	)	
PROVIDENCE HEALTH &	)	
SERVICES; PROVIDENCE HEALTH	)	
AND SERVICES –WASHINGTON	)	
d/b/a PROVIDENCE; PROVIDENCE	)	
ST. MARY MEDICAL CENTER; and	)	
PROVIDENCE MEDICAL GROUP	)	
d/b/a PROVIDENCE MEDICAL	)	
GROUP SOUTHEAST WASHINGTON	)	
NEUROSURGERY, a/k/a PMG	)	
NEUROSCIENCE INSTITUTE,	)	
WALLA WALLA a/k/a	)	
NEUROSCIENCE INSTITUTE d/b/a	)	
PROVIDENCE,	)	
Defendants.	)	

COMES NOW Plaintiffs, by and through their attorneys of record,  
ROBERT BEATTY-WALTERS and MARY L. POOL, and for their Complaint  
hereby allege as follows:

**I. INTRODUCTION**

1.1 This is a medical malpractice/corporate negligence action for damages caused by unnecessary and negligent surgeries performed by Defendants' agents and employees, including JASON A. DREYER, D.O., ("Dr. Dreyer") and DANIEL P. ELSKENS, M.D., ("Dr. Elskens") for the profit of, and on behalf of Defendants PROVIDENCE ST. JOSEPH HEALTH; PROVIDENCE HEALTH & SERVICES; PROVIDENCE HEALTH AND SERVICES –WASHINGTON d/b/a PROVIDENCE; PROVIDENCE ST. MARY MEDICAL CENTER; and PROVIDENCE MEDICAL GROUP d/b/a PROVIDENCE MEDICAL GROUP SOUTHEAST WASHINGTON NEUROSURGERY, a/k/a PMG NEUROSCIENCE INSTITUTE, WALLA WALLA a/k/a NEUROSCIENCE INSTITUTE d/b/a PROVIDENCE (hereinafter defendant "Providence").

1.2 Defendant Providence owns and operates St. Mary Medical Center (SMMC), a hospital located in Walla Walla, Washington. SMMC has multiple departments, one of which is the neurosurgery department.

1.3 Between July 1, 2013 and November 13, 2018 (hereinafter the relevant time period) Dr. Dreyer and Dr. Elskens were neurosurgeons employed by Providence at SMMC. Dr. Dreyer was a neurosurgeon employed by Providence at SMMC during the entire relevant time period, while Dr. Elskens was a neurosurgeon employed by Providence at SMMC between November 2015 and May 2017.

1.4 During the relevant time period, SMMC's neurosurgery department, including Dr. Dreyer and Dr. Elskens, performed a high volume of multi-level spinal surgeries. SMMC staff neurosurgeons, including Dr. Dreyer and Dr. Elskens, were paid compensation based on a personal productivity metric known as Work Relative Value Units (wRVUs), which were calculated based on a

1 value assigned under the Medicare Physician Fee Schedule to the services  
2 personally furnished by the individual neurosurgeon. SMMC neurosurgeons,  
3 including Dr. Dreyer and Dr. Elskens, were paid compensation for each wRVU  
4 that they generated, with no cap on the wRVU-based compensation that could be  
5 earned. In this manner, the greater the number of procedures of higher complexity  
6 that the neurosurgeon performed, the greater the compensation the neurosurgeon  
7 received.

8 1.5 Between 2014 and 2018, Dr. Dreyer's personal productivity, as  
9 measured by wRVUs, exceeded the 90<sup>th</sup> percentile of physician market survey data,  
10 and he was among the top producing neurosurgeons in the Providence system.  
11 Based on this productivity, between 2014 and 2017, Dr. Dreyer earned between  
12 \$2.5 million and \$2.9 million annually. On information and belief, during the  
13 relevant time period, Dr. Elskens' personal productivity, as measured by wRVUs,  
14 exceeded the 90<sup>th</sup> percentile of physician market survey data.

15 1.6 At various times during the relevant time period, Providence received  
16 both positive and negative information about Dr. Dreyer and Dr. Elskens.  
17 However, Providence personnel also had and articulated concerns regarding the  
18 quality of care provided by Dr. Dreyer and Dr. Elskens, as well as the medical  
19 necessity of surgical procedures performed by Dr. Dreyer. These included  
20 concerns that Dr. Dreyer: (1) completed medical documentation with falsified,  
21 exaggerated, and/or inaccurate diagnoses that did not accurately reflect the  
22 patient's true medical condition in order to obtain reimbursement for surgical  
23 procedures performed by Dr. Dreyer; (2) performed certain surgical procedures  
24 that did not meet the medical necessity guidelines and requirements for  
25 reimbursement set forth by Medicare and other government and private health  
26 insurance programs; (3) "over-operated", i.e., performed a surgery of greater

1 complexity and scope than was indicated and medically appropriate; and (4)  
2 jeopardized patient safety by attempting to perform an excessive number of overly  
3 complex surgeries.

4 1.7 These concerns also included concerns that Dr. Dreyer and  
5 Dr. Elskens: (1) endangered the safety of SMMC patients; (2) created an excessive  
6 level of complications, negative outcomes, and necessary additional operations as a  
7 result of their surgeries; (3) performed surgical procedures on certain candidates  
8 who were not appropriate candidates for surgery given their medical histories,  
9 conditions, and contraindications; and (4) failed to adequately and accurately  
10 document certain procedures, diagnoses, and complications.

11 1.8 On February 23, 2017, as a result of concerns articulated by SMMC  
12 medical staff, Providence placed Dr. Elskens on administrative leave and, shortly  
13 thereafter, initiated an independent analysis of certain concerns articulated as to Dr.  
14 Elskens with regard to certain specific patients.

15 1.9 On May 8, 2017, at a time in which Dr. Elskens was still under  
16 investigation by professional review bodies under the control of Providence  
17 relating to possible incompetence or improper professional conduct, and which  
18 adversely affected Dr. Elskens' clinical privileges to perform surgery, Providence  
19 accepted Dr. Elskens' resignation. Providence did not report Dr. Elskens to the  
20 National Practitioner Data Bank, which is a violation of 42 U.S.C. § 11133(a)(1),  
21 or report Dr. Elskens to the Washington State Department of Health.

22 1.10 On May 22, 2018, as a result of concerns articulated by SMMC  
23 medical staff, Providence placed Dr. Dreyer on administrative leave and initiated  
24 an independent analysis of certain concerns articulated as to Dr. Dreyer with regard  
25 to certain specific patients.

26 1.11 On November 13, 2018, at a time in which Dr. Dreyer was still under

1 investigation by Providence relating to possible incompetence or improper  
 2 professional conduct, Dr. Dreyer submitted his letter of resignation to Providence,  
 3 which Providence accepted. Providence did not report Dr. Dreyer to the National  
 4 Practitioner Data Bank, which is a violation of 42 U.S.C. § 11133(a)(1), or report  
 5 Dr. Dreyer to the Washington State Department of Health.

## 6 **II. PARTIES**

7 2.1. Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE MORRIS,  
 8 and ANNA TESTER, re-allege paragraphs 1.1 to 1.11 as though fully set forth  
 9 herein.

10 2.2 Plaintiff, TODD BATTEN, was at all times relevant to this cause of  
 11 action over the age of majority and residing in Elgin, Oregon.

12 2.3 Plaintiff, ROBERT DYER, was at all times relevant to this cause of  
 13 action over the age of majority and residing in Elgin, Oregon.

14 2.4 Plaintiff, REGGIE MORRIS, was at all times relevant to this cause of  
 15 action over the age of majority and residing in Pendleton, Oregon.

16 2.5 Plaintiff, ANNA TESTER, was at all times relevant to this cause of  
 17 action over the age of majority and residing in Pilot Rock, Oregon.

18 2.6 Defendants PROVIDENCE ST. JOSEPH HEALTH; PROVIDENCE  
 19 HEALTH & SERVICES; PROVIDENCE HEALTH AND SERVICES  
 20 –WASHINGTON d/b/a PROVIDENCE; PROVIDENCE ST. MARY MEDICAL  
 21 CENTER; and PROVIDENCE MEDICAL GROUP d/b/a PROVIDENCE  
 22 MEDICAL GROUP SOUTHEAST WASHINGTON NEUROSURGERY, a/k/a  
 23 PMG NEUROSCIENCE INSTITUTE, WALLA WALLA a/k/a NEUROSCIENCE  
 24 INSTITUTE d/b/a PROVIDENCE, (hereinafter “PROVIDENCE”) are  
 25 Washington State corporations located in Renton, Washington, and Walla Walla,  
 26 Washington, and regularly conducting business in Walla Walla County,

1 Washington.

2           2.7 PROVIDENCE ST. JOSEPH HEALTH and PROVIDENCE  
3 HEALTH & SERVICES – WASHINGTON did business as PROVIDENCE ST.  
4 MARY MEDICAL CENTER and PROVIDENCE MEDICAL GROUP  
5 SOUTHEAST WASHINGTON NEUROSURGERY. Defendant PROVIDENCE  
6 HEALTH & SERVICES – WASHINGTON, d/b/a PROVIDENCE ST. MARY  
7 MEDICAL CENTER, and d/b/a PROVIDENCE MEDICAL GROUP  
8 SOUTHEAST WASHINGTON NEUROSURGERY are referred to hereinafter  
9 collectively and individually as “Defendant PROVIDENCE.”

10           2.8 JASON A. DREYER, D.O. (hereinafter “Dr. DREYER”), was at all  
11 times material, an osteopathic physician and surgeon licensed to practice in the  
12 state of Washington, specializing in neurosurgery and engaged in the provision of  
13 medical and surgical care to Plaintiffs TODD BATTEN, ROBERT DYER, and  
14 REGGIE MORRIS, as an agent and/or employee of Defendant PROVIDENCE. At  
15 all times relevant hereto, Dr. DREYER held himself out to be a medical and  
16 surgical care provider whose services were offered to the public for compensation.  
17 All acts or omissions committed by Dr. DREYER were done in the course and  
18 scope of his employment with, on behalf of, and for the benefit of, his employer,  
19 defendant Providence.

20           2.9 DANIEL P. ELSKENS, M.D. (hereinafter “Dr. ELSKENS”), was  
21 during the relevant time period, a physician and surgeon licensed to practice in the  
22 state of Washington, specializing in neurosurgery and engaged in the provision of  
23 medical and surgical care to Plaintiff ANNA TESTER, as an agent and/or  
24 employee of Defendant PROVIDENCE. At all times relevant hereto, Defendant  
25 Providence held Dr. ELSKENS out to be a medical and surgical care provider  
26 whose services were offered to the public for compensation. All acts or omissions

1 committed by Dr. ELSKENS were done in the course and scope of his employment  
2 with, on behalf of, and for the benefit of, his employer, defendant Providence.

### 3 **III. JURISDICTION/VENUE**

4 3.1. Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE MORRIS,  
5 and ANNA TESTER re-allege paragraphs 1.1 through 2.9 as though fully set forth  
6 herein.

7 3.2 This court has jurisdiction over Plaintiffs' claims pursuant to 28  
8 U.S.C. § 1332, because there is complete diversity of citizenship between the  
9 parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest  
10 and costs.

11 3.3. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because a  
12 substantial part of the events and omissions giving rise to the claims alleged in the  
13 Complaint occurred in the Eastern District of Washington, specifically the Spokane  
14 Division; and, one or more of the Defendants resides in the Eastern District of  
15 Washington Court.

### 16 **IV. FACTS**

17 4.1 Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE MORRIS,  
18 and ANNA TESTER re-allege paragraphs 1.1 through 3.3 as though fully set forth  
19 herein.

#### 20 4.2 Plaintiff TODD BATTEN

21 4.2.1 On or about June 15, 2015, plaintiff TODD BATTEN sought  
22 consultation with Dr. Dreyer. Dr. Dreyer falsely interpreted a December 4, 2014,  
23 MRI of Plaintiff TODD BATTEN'S cervical spine to include a "dynamic  
24 instability with spondylolisthesis C5-6," and "spondylosis C4-5, C6-7" with  
25 "resulting foraminal stenosis at those levels." In addition, Dr. Dreyer falsely  
26 asserted Plaintiff TODD BATTEN suffered from "arm symptoms down the left



side.” Dr. Dreyer recommended a multi-level anterior cervical disc fusion (ACDF) from C4-7. On July 15, 2015, Plaintiff TODD BATTEN underwent an anterior cervical disk fusion (ACDF) surgery at the C4-7 levels, with plating, which was not medically indicated, and subjected Plaintiff TODD BATTEN to unnecessary risk from surgery, at PROVIDENCE ST. MARY MEDICAL CENTER in Walla Walla, Washington, which was reported and billed to Plaintiff and his health insurance companies to include the following:

1. C4-5, C5-6, C6-7 anterior interbody discectomy with decompression of the spinal court and osteophytectomy;
2. C4-5, C5-6, C6-7 anterior interbody arthrodesis;
3. C4-5, C5-6, C6-7 insertion of interbody allograft;
4. C4-C7 anterior instrumentation;
5. Microsurgical techniques;
6. Fluroscopic guidance for localization and instrumentation.

4.2.2 As a result of this unnecessary surgery performed by Dr. Dreyer, plaintiff TODD BATTEN suffered from adjacent segment disease in his cervical spine at C3, in addition to other symptoms, including increasing pain, and loss of range of motion. Dr. Dreyer then recommended additional unnecessary surgery at C3, in addition to a revision of the prior unnecessary surgery.

4.2.3 On or about April 18, 2018, Dr. Dreyer performed a second unnecessary and not medically indicated procedure on Plaintiff TODD BATTEN, including the following:

1. C3-4 anterior interbody discectomy with decompression of the spinal cord and osteophytectomy;
2. C6-7 revision anterior interbody discectomy with



1                               decompression of the spinal cord and osteophylectomy;

2                               3.    C3-4, C6-7 anterior interbody arthrodesis;

3                               4.    C3-4, C6-7 insertion of interbody PEEK cage;

4                               5.    C3-C4 anterior instrumentation;

5                               6.    C6-C7 separate anterior instrumentation;

6                               7.    Microsurgical techniques;

7                               8.    Fluoroscopic guidance for localization and  
8                               instrumentation;

9                               9.    Hardware removal at C5 without reinsertion.

10                    4.2.4 Each of these procedures were unnecessary and not medically  
11 indicated, and undertaken to maximize reimbursement and profit to both  
12 Providence and Dr. Dreyer personally.

13                    4.2.5 As a result of these unnecessary and not medically indicated  
14 surgeries, Plaintiff TODD BATTEN now suffers from permanent injury in his  
15 cervical spine, causing pain, loss of mobility, and other harms that he would not  
16 have suffered but for Providence and Dr. Dreyer's negligence in performing these  
17 unnecessary surgical procedures.

18                    4.2.6 Plaintiff TODD BATTEN learned of the fact that Providence  
19 had allowed Dr. Dreyer to perform unnecessary surgeries on or about April 12,  
20 2022, and could not reasonably have discovered Providence and Dr. Dreyer's  
21 negligence in performing unnecessary surgeries upon his cervical spine before  
22 April 12, 2022, when he learned of defendant Providence's settlement with the US  
23 Attorney for the Eastern District of Washington on Federal False Claims Act  
24 violations.

25                4.3    Plaintiff ROBERT DYER

26                    4.3.1 On or about August 22, 2017, Plaintiff ROBERT DYER sought

consultation with Providence providers, including Physician Assistant Derek Sucharda. At that time Mr. Sucharda interpreted a June, 2017, MRI as showing mild to moderate foraminal stenosis at L3-L4, right mild to moderate foraminal stenosis at L4-L5 and L5-S1. Subsequent to this visit, on November 8, 2017, February 28, 2018, and March 13, 2018, Dr. Dreyer falsely described the same MRI of the lumbar spine from June of 2017 to demonstrate spondylosis L3-4 and L5-S1, spondylolisthesis L4-5, significant facet hypertrophy L3-4, L4-5, and L5-S1, moderate lateral recess stenosis at L3-4, moderate central and *severe* lateral recess stenosis at L4-5, and *severe* right foraminal stenosis at L5-S1. Dr. Dreyer recommended a three level fusion of Plaintiff DYER's lumbar spine from L3-S1, using a lateral and posterior approaches. This recommendation was made even though the pathology present on Plaintiff ROBERT DYER'S MRI studies, nor his clinical signs and symptoms, showed the surgery to be medically indicated.

4.3.2 On or about March 13, 2018, Plaintiff ROBERT DYER underwent an unnecessary and not medically indicated three-level fusion on his lumbar spine, and subjected Plaintiff ROBERT DYER to unnecessary risk from surgery, at PROVIDENCE ST. MARY MEDICAL CENTER in Walla Walla, Washington, which was reported and billed to Plaintiff and his health insurance companies to include the following:

1. Anterior lumbar interbody arthrodesis, L3-4, L4-5 - lateral approach;
2. Postereolateral arthrodesis, L3-4, L4-5;
3. Combined posterior interbody and posterolateral arthrodesis, L5-S1;
4. PEEK interbody L3-4, L4-5, L5-S1;
5. Posterior spinal instrumentation L3-S1;

- 1                   6.     Laminectomies L4, L5, S1 for the purpose of
- 2                             decompression;
- 3                   7.     Use of allograft;
- 4                   8.     Use of microscope for microsurgical techniques;
- 5                   9.     Co-registration with navigation system for spinal
- 6                             navigation;

7                   4.3.3 Each of these procedures were unnecessary and not medically  
8 indicated, and were undertaken to maximize reimbursement and profit to both  
9 Providence and Dr. Dreyer personally.

10                  4.3.4 As a result of these unnecessary and not medically indicated  
11 surgeries, Plaintiff ROBERT DYER now suffers from permanent injury in his  
12 lumbar spine, causing pain, loss of mobility, and other harms, including an  
13 abdominal hernia, that he would not have suffered but for Providence and Dr.  
14 Dreyer's negligence in performing these unnecessary surgical procedures.

15                  4.3.5 Plaintiff ROBERT DYER learned of the fact that Providence  
16 had allowed Dr. Dreyer to perform unnecessary surgeries on or about May 21,  
17 2022, and could not reasonably have discovered Providence and Dr. Dreyer's  
18 negligence in performing unnecessary surgeries upon his lumbar spine before May  
19 21, 2022, when he learned of defendant Providence's settlement with the US  
20 Attorney for the Eastern District of Washington on Federal False Claims Act  
21 violations.

#### 22                  4.4     Plaintiff REGGIE MORRIS

23                  4.4.1 Plaintiff REGGIE MORRIS was referred to Dr. Dreyer on or  
24 about June 23, 2016, for pain in his mid-back. MRI studies done September 12,  
25 2016, showed a previously demonstrated mild disc bulge at T6-7 had "nearly  
26 disappeared." A CT scan done November 8, 2016, showed no disc bulge or

1 protrusion seen throughout the thoracic spine and no central canal stenosis.  
2 Nevertheless, Dr. Dreyer falsely asserted these films showed thoracic spondylosis  
3 and stenosis at T6-7, and a disc bulge and deformation of the spinal cord on the  
4 right at T6-7 and recommended fusion of the thoracic spine at T6-7.

5           4.4.2 On or about January 17, 2017, Plaintiff REGGIE MORRIS  
6 underwent unnecessary and extensive surgery performed by Dr. Dreyer on his  
7 thoracic spine, and subjected Plaintiff REGGIE MORRIS to unnecessary risk from  
8 surgery, at PROVIDENCE ST. MARY MEDICAL CENTER in Walla Walla,  
9 Washington, which was reported and billed to Plaintiff and his health insurance  
10 companies to include the following:

- 11                   1. Combined posterior interbody and posterolateral  
12                   arthrodesis T6-7;
- 13                   2. Posterior spinal instrumentation T6-7;
- 14                   3. PEEK Interbody at T6-7;
- 15                   4. Laminectomy at T6 and T7 for purposes of  
16                   decompression;
- 17                   5. Use of intraoperative microscope for microdissection;
- 18                   6. Co-registration for the purposes of spinal navigation.

19           4.4.3 Following this surgery, Plaintiff REGGIE MORRIS began to  
20 experience stabbing and shooting pain, thoracic pain, radiculopathy, cramps, and  
21 spasms. The area became infected and, in 2018, another surgery was required to  
22 remove the spinal pedicle screw instrumentation and other hardware. The surgeon  
23 performing the removal determined that it was not safe or feasible to remove the  
24 interbody cage and it remains in Mr. Morris's thoracic spine.

25           4.4.4 In 2022, a spinal cord stimulator was implanted, but only  
26 provided minimal relief from the pain. Mr. Morris continues to need opiate pain

1 medication to get through each day. His life has become focused on seeking relief  
2 from the pain. The pain makes most activities difficult, and some impossible. As  
3 time has passed it is worsening, and almost constant. As a result, he will require  
4 pain medications and management for the rest of his life.

5 4.4.5 In April 2021, a family member gave Plaintiff REGGIE  
6 MORRIS a news article about the fraud by Dr. Dreyer and Providence, and Reggie  
7 Morris first began to suspect that his thoracic spine surgery that has caused so  
8 much harm, was unnecessary. He later learned about Providence's role in  
9 incentivizing Dr. Dreyer to perform extensive and unnecessary spine surgeries for  
10 financial gain that benefitted Providence and Dr. Dreyer, while causing him and  
11 others in the community significant harm.

12 4.4.6 Plaintiff REGGIE MORRIS learned in or about April of 2021  
13 of the fact that Providence had allowed Dr. Dreyer to perform an unnecessary  
14 surgery, and could not reasonably have discovered Providence and Dr. Dreyer's  
15 negligence in performing unnecessary surgeries upon his thoracic spine before  
16 April of 2021, when he learned through news reports of defendant Providence's and  
17 Dr. Dreyer's alleged fraud in another case.

18 4.4.7 On or about February 22, 2022, pursuant to RCW 7.70.110,  
19 Plaintiff REGGIE MORRIS, served a Good Faith Request for Mediation on  
20 defendant Providence and Dr. Dreyer. On November 10, 2022, Plaintiff REGGIE  
21 MORRIS, defendant Providence, and Dr. Dreyer, entered into a tolling agreement  
22 extending the statute of limitations tolled by the Good Faith Request for Mediation  
23 until May 22, 2023, to allow time for mediation. A good faith mediation was held  
24 on March 28, 2023, which was unsuccessful.

25 4.5 Plaintiff ANNA TESTER

26 4.5.1 On or about November 29, 2016, Plaintiff Anna Tester sought

1 consultation with Dr. Daniel Elskens at defendant Providence clinic for pain in her  
2 lumbar spine. Dr. Elskens recommended a four level fusion including a lateral  
3 anterior interbody fusion with PEEK cages at L2-3, and L3-4; and transforaminal  
4 interbody fusion with PEEK cages at L2-3, L3-4, L4-5, and L5-S1. The  
5 procedures at L2-3, and L3-4 were not medically indicated or necessary.

6 4.5.2 On or about December 30, 2016, Plaintiff ANNA TESTER  
7 underwent a L2-3, L3-4, L4-5, lateral anterior interbody fusion with posterior  
8 instrumentation, L5-S1 transforaminal lumbar interbody fusion on her lumbar  
9 spine, and subjected Plaintiff ANNA TESTER to unnecessary risk from surgery, at  
10 PROVIDENCE ST. MARY MEDICAL CENTER in Walla Walla, Washington,  
11 performed by Dr. Elskens, which was reported and billed to Plaintiff and her health  
12 insurance companies to include the following:

- 13 1. L2-3, L3-4 lateral anterior interbody fusion with PEEK  
14 cages;
- 15 2. Posterior on lay facet fusions L2-3, 3-4, 4-5, and L5-S1;
- 16 3. L4-5 and L5-S1 transforaminal interbody fusion with  
17 PEEK cages;
- 18 4. posterior instrumentation L2-S1 with Stealth guidance

19 4.5.3 The procedures performed at L2-3 and L3-4, were unnecessary  
20 and not medically indicated, and undertaken to maximize reimbursement and profit  
21 to both Providence and Dr. Elskens personally.

22 4.5.4 As a result of these unnecessary and not medically indicated  
23 surgeries, Plaintiff ANNA TESTER now suffers from permanent injury in her  
24 lumbar spine, causing pain, loss of mobility, and other harms that he would not  
25 have suffered but for Providence and Dr. Elskens' negligence in performing these  
26 unnecessary surgical procedures.

1                   4.5.5 Plaintiff ANNA TESTER learned of the fact that Providence  
2 had allowed Dr. Elskens to perform unnecessary surgeries on or about April 12,  
3 2022, and could not reasonably have discovered Providence and Dr. Elskens'  
4 negligence in performing unnecessary surgeries upon her lumbar spine before  
5 April 12, 2022, when she learned of defendant Providence's settlement with the US  
6 Attorney for the Eastern District of Washington on Federal False Claims Act  
7 violations.

8                   **V.**

9                   **CAUSE OF ACTION FOR NEGLIGENCE VS**  
10                   **DEFENDANT PROVIDENCE**

11           5.1    Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE MORRIS,  
12 and ANNA TESTER re-allege paragraphs 1.1 through 4.5.5 as though fully set  
13 forth herein.

14           5.2    Defendant PROVIDENCE owed Plaintiffs TODD BATTEN,  
15 ROBERT DYER, REGGIE MORRIS, and ANNA TESTER a non-delegable duty  
16 of care to assure that they received safe and appropriate surgical care, performed in  
17 a safe and reasonable manner, and to adopt written policies and procedures specific  
18 to surgical services, and to provide for medical staff who were qualified, trained,  
19 and supervised subject to the medical direction of Defendant PROVIDENCE.

20           5.3    Defendant PROVIDENCE had a duty to select and retain only  
21 competent physicians and surgeons; a duty to formulate, adopt and enforce  
22 adequate rules and policies to ensure quality care for their patients, including a  
23 duty to maintain a coordinated quality improvement program for the improvement  
24 of the quality of health care services rendered to patients and the identification and  
25 prevention of medical malpractice; a duty to supervise its members and employees  
26 to assure that they adhere to the relevant standard of patient care, including a duty



1 to create quality improvement committees to monitor and review the performance  
2 of their medical staff; and, a duty to maintain and continuously collect information  
3 concerning the hospital's experience with negative health care outcomes and  
4 incidents injurious to patients as they relate to specific physicians and surgeons.

5 5.4 Defendant PROVIDENCE breached the afore listed duties by, without  
6 limitation:

7 5.4.1 Failing to formulate, adopt and enforce adequate rules, policies;  
8 and/or adopting policing or practices which in themselves  
9 created an unnecessary and unreasonable risk of harm to  
10 Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE  
11 MORRIS, and ANNA TESTER;

12 5.4.2 Failing to ensure proper oversight of its employees or agents to  
13 assure that Plaintiffs TODD BATTEN, ROBERT DYER,  
14 REGGIE MORRIS, and ANNA TESTER'S care was  
15 appropriate and within the relevant standard of care;

16 5.4.3 Defendant PROVIDENCE, negligently failed to monitor,  
17 proctor, or control, the surgical practice of Dr. DREYER and  
18 Dr. ELSKENS when Defendant PROVIDENCE knew or  
19 should have known that such monitoring, proctoring, or control  
20 was necessary because of results of prior surgical cases of Dr.  
21 DREYER and Dr. ELSKENS;

22 5.4.4 Defendant PROVIDENCE, negligently failed to restrict or  
23 terminate Dr. DREYER'S surgical privileges and/or his  
24 employment prior to January 19, 2017, and negligently failed to  
25 restrict or terminate Dr. ELSKENS' surgical privileges and/or  
26 his employment prior to December 30, 2016, when Defendant

1 PROVIDENCE knew or should have known that Dr. DREYER  
2 and Dr. ELSKENS had performed other medically unnecessary  
3 and excessive neurosurgical procedures including unnecessary  
4 spinal fusions, and used unnecessary instrumentation and  
5 medical hardware for the purpose earning excessive profits;

6 5.4.5 In failing to restrict or terminate Dr. DREYER'S surgical  
7 privileges and/or his employment prior to January 19, 2017, and  
8 negligently failed to restrict or terminate Dr. ELSKENS'  
9 surgical privileges and/or his employment prior to December  
10 30, 2016, when Defendant PROVIDENCE knew or should have  
11 known that Dr. DREYER and Dr. ELSKENS had caused other  
12 patient injuries in connection with neurosurgical procedures,  
13 including unnecessary spinal fusions, and the use of  
14 unnecessary instrumentation and medical hardware;

15 5.4.6 In failing to have properly-trained and objective surgeons  
16 systematically reviewing and scrutinizing Dr. DREYER'S and  
17 Dr. ELSKENS' surgeries performed at Defendant  
18 PROVIDENCE prior January 19, 2017, and December 30,  
19 2016, respectively, for medical necessity and standard of care  
20 or other harm;

21 5.4.7 In failing to have in place proper, effective and consistent  
22 quality assurance review processes and procedures that were  
23 unbiased and based upon reviews by objective physicians and  
24 surgeons trained in peer review, as required by law, and the  
25 standard of care for hospitals; and,

26 5.4.8 In deviating below the standard of care for a Hospital by failing

1 to adequately monitor, proctor or control, neurosurgical cases  
2 performed by Dr. DREYER and Dr. ELSKENS to assure their  
3 surgical care was medically necessary and not done for the  
4 purposes of earning excessive profit.

5 5.5 In respect to the above, PROVIDENCE, individually, and by and  
6 through the acts and omissions of its agents, representatives, employees and/or  
7 ostensible agents, failed to exercise the degree of skill and learning of a reasonably  
8 prudent hospital providing medical and neurosurgical care, including through  
9 employee or agent neurosurgeons performing in the same or similar circumstances;  
10 and, the failure to exercise such skill, care and learning was a proximate cause of  
11 the injuries and damages sustained by Plaintiffs, as set forth herein above.  
12 PROVIDENCE is directly liable to the named Plaintiffs under the corporate  
13 negligence doctrine.

14 **VI.**  
15 **CAUSE OF ACTION FOR NEGLIGENCE**  
16 **(Respondeat Superior) for JASON A. DREYER, D.O.**

17 5.6 Plaintiffs re-allege paragraphs 1.1 through 5.5 as though fully set forth  
18 herein.

19 5.7 In performing his duties as a neurosurgeon, Dr. DREYER had a duty  
20 of care to act with the degree of skill, care, and learning of a reasonably prudent  
21 neurosurgeon in the State of Washington performing neurosurgery in the same or  
22 similar circumstances at the time of the care or treatment in question.

23 5.8 Dr. DREYER breached his duty of care and was negligent by, without  
24 limitation: failing to follow the standard of care for reasonably prudent  
25 neurosurgeons performing in the same or similar circumstances during the course  
26 and scope of his pre-surgical, surgical, and follow-up care of Plaintiffs TODD  
BATTEN, ROBERT DYER, and REGGIE MORRIS, as set forth below.

1           5.9   Additionally, PROVIDENCE is vicariously liable for the negligence  
2 of its employees and agents, including Dr. DREYER, and subject to the doctrine of  
3 respondeat superior. In this regard, PROVIDENCE is liable to Plaintiff TODD  
4 BATTEN for the following breaches of the standard of care for cervical spine  
5 surgery by its employees or agents (without limitation):

6           5.9.1 In falsely documenting Mr. Batten's symptoms to include arm  
7 pain, when he had none, in order to falsely justify doing  
8 surgery;

9           5.9.2 In falsely documenting the findings on Mr. Batten's imaging  
10 studies to include a "dynamic instability with spondylolisthesis  
11 C5-6," and "spondylosis C4-5, C6-7" with "resulting foraminal  
12 stenosis at those levels" in order to fraudulently support the  
13 unnecessary surgery on his cervical spine;

14          5.9.3 In performing an unnecessary and not medically indicated  
15 surgery on Mr. Batten's cervical spine on July 15, 2015;

16          5.9.4 In negligently recommending and using excessive medical  
17 device hardware instrumentation on Mr. Batten's spine when  
18 such instrumentation was not medically necessary;

19          5.9.5 In performing an unnecessary and not medically indicated  
20 surgery on Mr. Batten's cervical spine on April 18, 2018; and

21          5.9.6 In negligently performing these surgeries in order to maximize  
22 reimbursement and profit to both Providence and Dr. Dreyer  
23 personally.

24          5.10 The breaches in the standard of care by PROVIDENCE employees  
25 and/or agents were a proximate cause of the injuries and damages sustained by  
26 Plaintiff TODD BATTEN, as set forth herein above.

1           5.11 Additionally, PROVIDENCE is vicariously liable for the negligence  
 2 of its employees and agents, including Dr. DREYER, and subject to the doctrine of  
 3 respondeat superior. In this regard, PROVIDENCE is liable to Plaintiff ROBERT  
 4 DYER for the following breaches of the standard of care for lumbar spine surgery  
 5 by its employees or agents (without limitation):

6                   5.11.1           In falsely interpreting Mr. Dyer's imaging studies to  
 7                                       justify doing an unnecessary and not medically indicated  
 8                                       surgery on Mr. Dyer's lumbar spine;

9                   5.11.2           In negligently recommending and using excessive  
 10                                      medical device hardware instrumentation on Mr. Dyer's  
 11                                      spine when such instrumentation was not medically  
 12                                      necessary;

13                  5.11.3           In performing an unnecessary and not medically  
 14                                      indicated surgery on Mr. Dyer's lumbar spine on March  
 15                                      14, 2018; and,

16                  5.11.4           In negligently performing these surgeries in order to  
 17                                      maximize reimbursement and profit to both Providence  
 18                                      and Dr. Dreyer personally.

19           5.12 The breaches in the standard of care by PROVIDENCE employees  
 20 and/or agents were a proximate cause of the injuries and damages sustained by  
 21 Plaintiff ROBERT DYER, as set forth herein above.

22           5.13 Additionally, PROVIDENCE is vicariously liable for the negligence  
 23 of its employees and agents, including Dr. DREYER, and subject to the doctrine of  
 24 respondeat superior. In this regard, PROVIDENCE is liable to Plaintiff REGGIE  
 25 MORRIS for the following breaches of the standard of care for thoracic spine  
 26 surgery by its employees or agents (without limitation):

5.13.1 In falsely asserted preoperative imaging studies showed thoracic spondylosis and stenosis at T6-7, and a disc bulge and deformation of the spinal cord on the right at T6-7;

5.13.2 In negligently recommending and using excessive medical device hardware instrumentation on Mr. Morris's thoracic spine when such instrumentation was not medically necessary;

5.13.3 In performing an unnecessary and not medically indicated surgery on Mr. Morris's thoracic spine on January 19, 2017; and,

5.13.4 In negligently performing these surgeries in order to maximize reimbursement and profit to both Providence and Dr. Dreyer personally.

5.14 The breaches in the standard of care by PROVIDENCE employees and/or agents were a proximate cause of the injuries and damages sustained by Plaintiff REGGIE MORRIS, as set forth herein above.

## VII. CAUSE OF ACTION FOR NEGLIGENCE (Respondeat Superior) for DANIEL P. ELSKENS, M.D.

6.1 Plaintiffs re-allege paragraphs 1.1 through 5.14 as though fully set forth herein.

6.2 In performing his duties as a neurosurgeon, Dr. ELSKENS had a duty of care to act with the degree of skill, care, and learning of a reasonably prudent neurosurgeon in the State of Washington performing neurosurgery in the same or similar circumstances at the time of the care or treatment in question.

6.3 Dr. ELSKENS breached his duty of care and was negligent by,

1 without limitation: failing to follow the standard of care for reasonably prudent  
2 neurosurgeons performing in the same or similar circumstances during the course  
3 and scope of his pre-surgical, surgical, and follow-up care of Plaintiff ANNA  
4 TESTER, as follows:

5         6.4 Dr. ELSKENS committed these negligent acts during the scope of his  
6 employment with and for Defendant PROVIDENCE and while performing duties  
7 as an actual agent of PROVIDENCE.

8         6.5 As a direct and proximate result of Dr. ELSKENS' actions or  
9 omissions which constituted negligence, Plaintiff ANNA TESTER suffered  
10 injuries and damages in an amount and to an extent to be set forth fully at trial.  
11 Defendant PROVIDENCE is now liable to Plaintiff ANNA TESTER for Dr.  
12 ELSKENS' breach of the duty of care as set forth herein above.

13         6.6 Additionally, PROVIDENCE is vicariously liable for the negligence  
14 of its employees and agents, including Dr. ELSKENS, and subject to the doctrine  
15 of respondeat superior. In this regard, PROVIDENCE is liable to Plaintiff ANNE  
16 TESTER for the following breaches of the standard of care for lumbar spine  
17 surgery by its employees or agents (without limitation):

18                 6.6.1 In negligently recommending and using excessive medical  
19 device hardware instrumentation on Ms. Tester's lumbar spine  
20 at L2-3, and L3-4 when such instrumentation was not medically  
21 necessary;

22                 6.6.2 In falsely asserted preoperative imaging studies showed  
23 instability and severe stenosis at L2-3, and L3-4, when no such  
24 findings existed;

25                 6.6.3 In negligently recommending and using excessive medical  
26 device hardware instrumentation on Ms. Tester's lumbar spine



1 when such instrumentation was not medically necessary;

2 6.6.4 In performing an unnecessary and not medically indicated  
3 surgery on Ms. Tester's lumbar spine on December 30, 2016;  
4 and,

5 6.6.5 In negligently performing these surgeries in order to maximize  
6 reimbursement and profit to both Providence and Dr. Elskens  
7 personally.

8 6.7 The breaches in the standard of care by PROVIDENCE employees  
9 and/or agents were a proximate cause of the injuries and damages sustained by  
10 Plaintiff ANNE TESTER, as set forth herein above.

11 **VIII. ACTING IN CONCERT**

12 7.1 Plaintiffs re-allege paragraphs 1.1 through 6.7 as though fully set forth  
13 herein.

14 7.2 At all times relevant hereto, the named Defendants, as well as their  
15 involved employees or agents, were acting in concert. As set forth herein above,  
16 all acts or omissions of the Defendants, their employees or agents in respect to the  
17 negligent care of Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE  
18 MORRIS, and ANNA TESTER and related injuries and damages are indivisible.  
19 The Defendants are jointly and severally liable for the damages caused by the  
20 negligent care of Plaintiffs TODD BATTEN, ROBERT DYER, REGGIE  
21 MORRIS, and ANNA TESTER.

22 **IX. PRAYER FOR RELIEF**

23 8.1 Plaintiffs re-allege paragraphs 1.1 through 7.2 as though fully set forth  
24 herein.

25 8.2 NOW WHEREFORE, Plaintiffs pray for judgment against the  
26 above-named Defendants and in favor of Plaintiffs TODD BATTEN, ROBERT

DYER, REGGIE MORRIS, and ANNA TESTER as follows:

8.2.1 For an award of special damages in an amount to be proven at trial;

8.2.2 For an award of general damages in an amount to be proven at trial;

8.2.3 For an award of attorney's fees and costs if available;

8.2.4 For an award of statutory, exemplary, or punitive damages if available;

8.2.5 For an award of prejudgment interest;

8.2.6 For such other and further relief, as the court deems just and equitable.

8.3 Plaintiffs reserve the right to amend the Complaint pursuant to the Court rules.

**Demand for trial by Jury:** Plaintiffs hereby demand that this case be tried to a jury panel of 12 jurors with a number of alternates as agreed by the parties and ordered by the Court.

DATED this 10<sup>th</sup> day of April, 2023.

LAW OFFICE OF ROBERT BEATTY-WALTERS



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